

## **Department of Real Estate**

### **SAFE ACT - Frequently Asked Questions**

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#### **Do the New MLO License Endorsement Requirements Apply to Me?**

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**Q.** What is the definition of mortgage loan originator?

**A.** Mortgage loan originator means an individual who for compensation or gain in expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.

**Q.** What is a residential mortgage loan?

**A.** A residential mortgage loan is any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling. Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence.

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**Q.** I originate residential mortgage loans. Do I need a Mortgage Loan Originator License Endorsement?

**A.** Yes. A Mortgage Loan Originator License Endorsement must be obtained BEFORE doing any of the following residential property mortgage loan activities: soliciting, originating a loan application, offering, or negotiating any residential mortgage loans. (See definition of residential mortgage loan above.)

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**Q.** I am licensed as a real estate salesperson and I do not solicit, originate, offer, or any mortgage loans. However, when I have buyers approach me about listings, I refer them to a loan officer or a bank. I am not compensated for those referrals. Do I need a Mortgage Loan Originator License Endorsement?

**A.** No.

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**Q.** I am licensed as a real estate salesperson and I solicit customers for real estate activities. I am compensated to refer them to a loan officer for a residential mortgage loan. Do I need a Mortgage Loan Originator License Endorsement?

**A.** Yes. Note, however, that this practice may violate other laws, such as RESPA.

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**Q.** I am licensed as a real estate salesperson, but I have not been doing any activities at all. I pass out my business card because I am still hoping to do activities, including mortgage loans. Do I need to obtain a Mortgage Loan Originator License Endorsement?

**A.** Yes.

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**Q.** I arranged mortgage loans in the past but will not do any more mortgage loan activity. Will I have to either file a Mortgage Loan Activity Notification Form RE 866 with DRE or obtain a Mortgage Loan Originator License Endorsement?

**A.** No.

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**Q.** I am licensed as a broker, but I do not do any mortgage activities using the license. I work as a loan originator for a bank. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** No.

**Q.** Under those circumstances, do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** No.

**Q.** Under those circumstances, do I need to register with the NMLS?

**A.** Check with your employing bank.

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**Q.** I am doing activities for a CFL lender (California Finance Lenders License) or an RML lender (Residential Mortgage Lender License). I do not use my DRE license. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** No.

**Q.** Under those circumstances, do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** No.

**Q.** Under those circumstances, do I need to register with the NMLS?

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**A.** Check with your employing company.

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**Q.** I am an agent or broker servicing mortgage loans. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** No, but the Consumer Financial Protection Bureau may issue Rules to the contrary if the loans being serviced are residential loans. It is anticipated that this clarification will be made in 2012 or 2013.

**Q.** Under those circumstances, do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** Yes.

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**Q.** I broker only commercial mortgage loans. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** No.

**Q.** Under those circumstances, do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** No.

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**Q.** I perform residential loan modifications. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** Yes.

**Q.** Under those circumstances, do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** Yes.

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**Q.** I perform short sale negotiations as part of my listing agreement with the seller of the property and am not compensated for negotiating with the lender. I am paid for completing the sale per the listing agreement. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** No. The negotiation of a short sale transaction with a lender does not meet the definition of a mortgage loan origination, so a Mortgage Loan Originator License Endorsement would not be required.

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**Q.** Under those circumstances, do I need to report this as mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** No.

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**Q.** I perform short sale negotiations as part of the residential mortgage loan modification service I provide to the borrower for compensation. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** Yes.

**Q.** Under those circumstances, do I need to report this as mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** Yes.

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**Q.** I perform short sale negotiations between borrowers and lenders for residential mortgage loan refinancing and I am compensated for negotiating the refinance loan. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** Yes.

**Q.** Under those circumstances, do I need to report this as mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** Yes.

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**Q.** I perform short sale negotiations between a borrower and the lender and I do not have a listing agreement with the seller of the property. In addition, I am compensated for negotiating with the lender. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** No. The negotiation of a short sale transaction with a lender does not meet the definition of a mortgage loan origination, so a Mortgage Loan Originator License Endorsement would not be required. All the same, the negotiation of a short sale with a lender is an act that requires a real estate license. Accordingly, unless an individual qualifies under an exemption from the Real Estate Law, he or she must be licensed as either a real estate broker or as a real estate salesperson and be properly licensed to a broker.

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**Q.** Under those circumstances do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** No.

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**Q.** If I hold a real estate license and I only originate 7 or fewer loans in a year, am I exempt from the requirement to obtain a Mortgage Loan Originator License Endorsement?

**A.** No. If mortgage loan origination activities are performed for compensation or gain, then a Mortgage Loan Originator License Endorsement is required before any loan origination activities are performed.

B & P Section 10131.1 (b) 1 (C) states that a DRE broker license is required when making (funding) eight or more residential property mortgage loans for one to four units from one's own funds in a year. If this lender also performs Mortgage Loan Origination activities for these transactions and is compensated, then a Mortgage Loan Originator License Endorsement will also be required.

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**Q.** I refer residential mortgage loan customers to mortgage loan originators and receive compensation. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** Yes. A Mortgage Loan Originator License Endorsement is required for activity that includes taking a loan application, offering or negotiating a residential loan. Note, however, that this practice may violate other laws, such as RESPA.

**Q.** Under those circumstances do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** Yes.

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**Q.** I lend out my own money, fund or make loans for residential mortgage loans. I do not charge any fees to the borrower. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** No.

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**Q.** Under those circumstances do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** Yes, if you act pursuant to Section 10131.1 or subdivision (d) or (e) of Section 10131 of the Business and Professions Code.

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**Q.** I lend out my own money, fund, or make loans for residential mortgage loans. I solicit the borrower, help complete the loan application or negotiate the loan terms and I am paid a fee by the borrower. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** Yes.

**Q.** Under those circumstances do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** Yes.

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**Q.** I am a broker or salesperson arranging only private money loans for residential properties. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** Yes.

**Q.** Under those circumstances do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** Yes.

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**Q.** I am a broker or salesperson arranging residential mortgage loans 1-4 unit properties for investors. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** Yes, if the loan is made for personal, family, or household use. Note: A mortgage loan originator who only originates loans for investors who will use the loan to purchase rental properties for income will not need an originator license, but if any of those investors purchase a property for a family member or for other personal use, then he purchased it for personal, family or household use and the loan agent would have to have the MLO License Endorsement on the DRE license BEFORE soliciting the investor/borrower, taking an application or negotiating the loan terms. Disciplinary action and penalties would apply if any of these activities were conducted without the MLO License Endorsement.

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**Q.** Under those circumstances, do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** Yes.

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**Q.** I am a broker or salesperson arranging seller carry-back notes in residential sales of 1-4 unit properties. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** If a seller carry-back note is an extension of credit that is arranged by a licensee who is completing the terms of a sale of a property and the activity does not include compensation for residential mortgage loan activity, then a Mortgage Loan Originator License Endorsement will not be required. If the activities include taking an application and negotiating the terms of a residential mortgage loan, and the licensee is compensated for the mortgage loan activity, then a Mortgage Loan Originator License Endorsement will be required.

**Q.** Under those circumstances, do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** No.

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**Q.** I am a broker or salesperson providing seller financing for residential mortgage loans of 1-4 unit properties. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** If you are providing financing for residential mortgage loans and you are compensated for taking an application, negotiating or offering to negotiate the terms of the loan, then a Mortgage Loan Originator License Endorsement will be required.

**Q.** Under those circumstances, do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** Yes.

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**Q.** I have a **restricted** license and use it to perform mortgage loan origination activities. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** Yes.

**Q.** Under those circumstances do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** Yes.

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**Q.** I am a real estate broker who has hired brokers and salespersons to do mortgage loan origination for residential properties. Do I report my mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** Yes. All licensed salespersons and brokers must file a Mortgage Loan Activity Notification Form RE 866 and obtain and maintain a Mortgage Loan Origination License Endorsement.

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**Q.** I do not do any FHA loans, but do originate residential mortgage loans. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** Yes.

**Q.** Under those circumstances do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** Yes.

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**Q.** My DBA includes the term, “Loans” but I no longer do loan activity. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** No.

**Q.** Under those circumstances do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** No.

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**Q.** I do not regularly do mortgage loans, but once in a while I take a loan application for one of my real estate customers. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** It depends on for what purpose you are taking the loan application. If you are merely taking the application, but never offer or negotiate loan terms, then the Mortgage Loan Originator License Endorsement may not be required.

**Q.** Under those circumstances do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** Yes, if you fall within the definition of a residential mortgage loan originator.



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**Q.** Does the new Mortgage Loan Originator License Endorsement apply only to new licensees?

**A.** No. It applies to current licensees as well as new licensees.

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**Q.** I am a licensed salesperson working for a broker who arranges loans. Do I need to report these activities to the DRE?

**A.** Yes, if you also perform mortgage loan activities.

**Q.** Under those circumstances do I need to obtain a Mortgage Loan Originator License Endorsement?

**A.** Yes, if you solicit, negotiate, or originate mortgage loans for residences of 1 to 4 units.

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**Q.** If I obtain the NMLS unique identifier (not the California Mortgage Loan Originator License Endorsement), will I be able to do loans in all fifty states?

**A.** No. You must also obtain the required MLO license for that state's jurisdiction as well as any other state specific requirements.

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**Q.** If I obtain the NMLS unique identifier, will I be able to do loans without a DRE license?

**A.** No. You must also have a current DRE license and obtain a Mortgage Loan Originator License Endorsement.

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**Q.** I am in California and using my DRE licensee to do residential mortgage loan origination activity in other states. Do I need a Mortgage Loan Originator License Endorsement on my DRE license?

**A.** Yes.

**Q.** Under those circumstances do I need to report this mortgage loan activity on a Mortgage Loan Activity Notification Form RE 866?

**A.** Yes.

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**Q.** I am an independent contractor processor or underwriter. Will I need to obtain a Mortgage Loan Originator License Endorsement?

**A.** Yes.

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**Q.** Under those circumstances do I also need to obtain a real estate license?

**A.** Yes. An independent contractor loan processor or underwriter is required to have a Mortgage Loan Originator License Endorsement and a real estate broker license for residential mortgage loans. A loan processor or underwriter who performs activities for more than one broker will also be required to have a Mortgage Loan Originator License Endorsement and a real estate broker license. If loan processing or underwriting activities are performed by an employee of a licensed DRE broker, an Mortgage Loan Originator License Endorsement will not be required if the loan processing or underwriting activities are performed under the supervision, direction, and instruction of the employing broker and no other activities are performed which require a real estate license.

**Q.** If I have a DRE Mortgage Loan Originator (MLO) license endorsement, do I need an MLO license issued by the DOC to work for a CRMLA or CFLL company?

**A.** An MLO with an ACTIVE DRE MLO license endorsement does not need a DOC MLO license to work for a CRMLA or CFLL company. However, an MLO with an INACTIVE DRE MLO license endorsement must obtain an MLO license from the DOC to work for a CRMLA or CFLL company.

The California Financial Code (CA Fin. Code) allows for certain exemptions from licensing by the Department of Corporations (DOC) as a Mortgage Loan Originator (MLO). These exemptions can be found in CA Fin. Code Section 22100(b) for the California Finance Lenders Law (CFL) and Section 50002.5(a) for the California Residential Mortgage Lending Act (CRMLA).

For currently licensed real estate salespersons, holding an ACTIVE DRE MLO license endorsement means that you are employed by a properly licensed real estate broker which holds an active MLO license endorsement as a sole proprietor, or licensed real estate corporation which holds an active MLO license endorsement. As a salesperson, once your employment with a properly licensed MLO real estate broker is terminated, your MLO status will be changed from active to inactive and you will have to obtain a MLO license from the DOC in order to continue to work for a CRMLA or CFLL company. For currently licensed real estate brokers, holding an ACTIVE DRE MLO license endorsement means that (1) you hold an active MLO license endorsement as a sole proprietor or (2) you are employed as a broker associate by a properly licensed real estate broker which holds an active MLO license endorsement as a sole proprietor, or by a licensed real estate corporation which holds an active MLO license endorsement. As a broker associate, once your employment with a properly licensed MLO real estate broker is terminated, your MLO status will be changed from active to inactive and you will have to obtain a MLO license from the DOC in order to continue to work for a CRMLA or CFLL company.

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**Q.** If I have a DRE MLO active license endorsement, how do I include my DOC-licensed company as my sponsor?

**A.** The NMLS system will not allow a DOC-licensed company to sponsor an MLO holding a DRE MLO license endorsement. In this case DOC sponsorship by a CFLL or CRMLA company is not required. If you would like the DOC-licensed company to be reflected as your sponsor on NMLS, you may apply for a DOC MLO license in addition to your DRE MLO license endorsement, meet all DOC licensing requirements and pay the applicable fees.

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